

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) Case No. 2:13-cr-00018-JCM-GWF
5 vs.) 2:13-cr-174-JCM-CWH
6 LEON BENZER (1),) Las Vegas, Nevada
7 Defendant.) January 23, 2015
8) 10:35 a.m.
9) Change of Plea
10)
11)

12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE JAMES C. MAHAN
14 UNITED STATES DISTRICT COURT JUDGE

15 APPEARANCES:

16 For the Government:

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Appearances continued on page 2.

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Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 Appearances continued:

2 For the Defendant Leon Benzer:

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1 (Friday, January 23, 2015, 10:35 a.m.)

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3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: Court is now in session.

5 This is the time set for change of plea of Leon
6 Benzer, in 2:13-cr-18-JCM-GWF and 2:13-cr-174-JCM-CWH, United
7 States of America versus Leon Benzer.

8 Counsel, please note your appearances for the record.

9 THE COURT: Mr. La Bella.

10 MR. LA BELLA: Good morning, Your Honor. Charles
11 La Bella and Thomas Hall for the government.

12 THE COURT: Thank you. I went back to my law school
13 several months ago and met a man named -- a classmate of mine
14 named John Arterberry. He said, "Say hi to Chuck for me." So,
15 I've said "Hi" to Chuck. All right.

16 MR. LA BELLA: I know John very well. Thank you.

17 THE COURT: All right. Mr. Albregts.

18 MR. ALBREGTS: Good morning, Your Honor. Dan
19 Albregts and Franny Forsman, on behalf of Leon Benzer, who is
20 present. We want to thank the Court for setting this so
21 quickly.

22 THE COURT: And what's your co-counsel's name?

23 MR. ALBREGTS: Franny Forsman.

24 THE COURT: All right.

25 MR. ALBREGTS: F-O-R-S-M-A-N.

1 THE COURT: Okay.

2 MR. ALBREGTS: I think her Bar number is like 10 or
3 something.

4 THE COURT: Something like that. She's a former
5 public defender for the --

6 MR. ALBREGTS: She's also a member of our team.

7 THE COURT: -- district, so I'm teasing her a little
8 bit if that's permissible.

9 All right. Everybody ready to proceed this morning?

10 MR. ALBREGTS: We are, Your Honor.

11 THE COURT: Let me ask you, counsel and the
12 defendant, to approach the lectern, please. I'm going to have
13 the clerk swear the defendant.

14 (Defendant sworn.)

15 THE COURT: Mr. Benzer, do you understand that having
16 been sworn, your answers to my questions are subject to the
17 penalty of perjury if you do not answer truthfully?

18 THE DEFENDANT: I do.

19 THE COURT: Now, Mr. Albregts, has the defendant been
20 furnished with a copy of the charge against him?

21 MR. ALBREGTS: He has.

22 THE COURT: And does he waive the reading of the
23 indictment?

24 MR. ALBREGTS: We do.

25 THE COURT: Mr. Benzer, do you understand the charge

1 against you?

2 THE DEFENDANT: I do.

3 THE COURT: Do you read, write, and understand the
4 English language?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: All right.

7 Mr. Albregts, how does the defendant intend to plead?

8 MR. ALBREGTS: Guilty, Your Honor.

9 THE COURT: Both -- all counts in both indictments;
10 correct?

11 MR. ALBREGTS: Yes, sir.

12 THE COURT: Is that correct, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Before accepting your guilty plea, there
15 are a number of questions I'm going to have to ask you in order
16 to assure myself that you are entering a valid plea. If you do
17 not understand any of my questions, will you let me know, so I
18 can rephrase the question?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And then at any time, if you want to take
21 a break during the proceedings, so you can discuss matters in
22 private your attorneys, will you let me know so I can give you
23 that opportunity?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Thank you. How old are you, sir?

1 THE DEFENDANT: 48.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: High school plus a couple semesters
4 of college.

5 THE COURT: Have you taken any drugs, medicine, pills
6 of any kind, or drunk any alcoholic beverages in the past 24
7 hours?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you been treated for any mental
10 illness or addiction to narcotic drugs of kind?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you understand what's happening today?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Tell me, in your own words, what's
15 happening today. Why are we here?

16 THE DEFENDANT: To enter a plea.

17 THE COURT: You are going to plead guilty to two
18 indictments; is that correct?

19 THE DEFENDANT: That's correct.

20 THE COURT: All right. Does either counsel have any
21 doubt -- or does any counsel have any doubt as to the
22 defendant's competence to plead in the matter?

23 MR. LA BELLA: None from the government, Your Honor.

24 MR. ALBREGTS: No, Your Honor.

25 THE COURT: Based on counsel's representation and the

1 Court's own observation of the defendant, I find the defendant
2 is competent to plead in this matter.

3 Now, Mr. Benzer, have you had ample opportunity to
4 discuss your case with Mr. Albregts and Miss Forsman?

5 MR. ALBREGTS: Yes, I have.

6 THE COURT: Are you satisfied to have them as your
7 attorneys?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: Do you understand that under the
10 constitution and laws of the United States, you are entitled to
11 have attorneys represent you at every stage of the proceedings
12 in this case?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And do you understand that under the
15 constitution and laws of the United States, you are entitled to
16 a trial by jury on the charges contained in the indictment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And do you understand that in order to
19 convict you, all of the jurors would have to agree that you
20 were guilty?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand that at a trial, you
23 would be presumed to be innocent, and the government would have
24 to overcome that presumption and prove you guilty beyond a
25 reasonable doubt, by competent evidence; and you would not have

1 to prove that you were innocent?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Do you also understand that in the course
4 of a trial, the witnesses upon whom the government is relying
5 would have to come to court and testify in your presence, and
6 your attorneys could cross-examine those witnesses and could
7 object to any evidence offered by the government?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you also understand that at a trial,
10 your attorneys would have the right to call witnesses and to
11 present evidence on your behalf?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you also understand at a trial,
14 while you would have a right to testify, if you chose to do so,
15 you would also have the right not to testify?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If I accept your guilty plea, do you
18 understand that you will be waiving or giving up your right to
19 a jury trial and all the other rights I have just discussed?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand there will be no
22 further trial, but I will simply enter a judgment of guilty and
23 sentence you based on your guilty plea?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: In pleading guilty, do you understand you

1 also will have to waive your right not to testify against
2 yourself, because I am going to have to ask you questions about
3 what you did in order to satisfy myself that you are guilty as
4 charged?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And do you also understand that in order
7 for me to accept your guilty plea, you will have to admit that
8 you committed the crimes charged in both of the indictments --
9 both of the pending indictments. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Are you willing to give up your right not
12 the testify against yourself in order for me to accept your
13 guilty plea today?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you read the indictments against
16 you? Have you read a copy of the indictments?

17 THE DEFENDANT: Yes, I have.

18 THE COURT: And have you discussed with your
19 attorneys the charges in the indictments to which you intend to
20 plead guilty?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, Mr. Albregts, does pleading guilty
23 affect this defendant's immigration status?

24 MR. ALBREGTS: It does not, Your Honor.

25 THE COURT: All right. You were charged in the

1 indictments with violations of Title 18, United States Code,
2 Sections 1341, 1343, and 1349, which make wire fraud, mail
3 fraudulent, and conspiracy to commit wire and mail fraud
4 crimes. And you are also charged with a violation of Title 26,
5 United States Code, Section 7201, which makes tax evasion a
6 crime.

7 The elements of the offense of conspiracy to commit
8 wire and mail fraud are: First, there was an agreement between
9 two or more persons to commit mail fraud and wire fraud; and,
10 second, the defendant was a party to or a member of that
11 agreement; and third, the defendant became a member of the
12 conspiracy knowing of at least one of its objects and intending
13 to help accomplish it.

14 The elements of wire fraud are: First, the existence
15 of a scheme to defraud; and, second, the use of wire, radio or
16 television to further the scheme; and, third, a specific intent
17 to defraud.

18 And the elements of mail fraud are: First, the
19 existence of a scheme to defraud; and, second, the use of mail
20 to further the scheme; and, third, a specific intent to
21 defraud.

22 The elements of tax evasion are: First, an
23 affirmative act by a defendant to evade or defeat a tax; and,
24 second, an additional tax due and owing; and, third,
25 willfulness as defined as an intentional violation of a known

1 legal duty, i.e., to report all of one's income on your tax
2 return and to pay all required taxes.

3 Do you understand that all of that is what the
4 government would have to prove in order for you to be convicted
5 of the crimes charged in indictments?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you know the maximum sentence I might
8 impose on the charges in the indictments to which you are
9 seeking to plead guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Are you aware the maximum possible
12 penalty for -- per count rather -- the maximum possible penalty
13 per count, for violations of 18 USC, Sections 1341, 1343, and
14 1349, would be a fine of \$1 million, or a term of imprisonment
15 of 30 years, or both a fine and imprisonment.

16 And the maximum possible penalty per count for
17 violations of 26 USC, Section 7201, would be a fine of \$250,000
18 or twice the gross gain or loss resulting from the offense, or
19 a term of imprisonment of five years, or both a fine and
20 imprisonment for each count.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you also understand that a special
24 assessment fee of \$100 per count will be imposed at the time of
25 sentencing?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you also understand that in every
3 criminal case in which a defendant may be sentenced to more
4 than one year in prison, as in this case, that in addition to
5 any maximum possible penalty, the Court may also order a term
6 of supervised release to follow that imprisonment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And do you understand supervised release
9 could be imposed here for a term of up to five years per count?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand that while on
12 supervised release, you would be required to abide by
13 conditions specified by the Court, and that supervised release
14 could be revoked if you violated any of those conditions?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you understand that if supervised
17 release is revoked for any reason, you may be imprisoned for
18 the full term of supervised release without credit for time
19 spent on post-release supervision?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And do you also understand the combined
22 time spent in prison, under a sentence of imprisonment, added
23 to the time spent in prison, if supervised release is revoked,
24 could exceed the term of your original sentence?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And do you also understand the Court may
2 order you to make restitution to any victim of the offense to
3 which you are pleading guilty?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand the offenses to which
6 you are pleading guilty are felony offenses?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Excuse me just a moment.

9 For the record, I had to blow my nose. I apologize.

10 All right. You understand they are felony offenses;
11 is that correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: If your plea is accepted, you will be
14 adjudged guilty of felonies, and that may deprive you of
15 valuable civil rights, such as the right to vote, the right to
16 serve on a jury, or the right to possess any kind of a firearm.
17 Do you understand that?

18 THE DEFENDANT: Yes, I do, Your Honor.

19 THE COURT: Has anyone threatened you or forced you
20 to plead guilty?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Has anyone told you, if you do not plead
23 guilty, further charges will be brought against you?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Has anyone told you, if you do not plead

1 guilty, some other adverse action will be taken against you?

2 THE DEFENDANT: Yes, Your Honor. I mean, no, Your
3 Honor.

4 THE COURT: That's no?

5 THE DEFENDANT: That's a no for the record.

6 THE COURT: And are you pleading guilty because of
7 any coercion from or fear of codefendants?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Is your willingness to plead guilty a
10 result of prior discussions and negotiations between your
11 attorneys and the attorneys for the government?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you understand that plea
14 agreements are permissible, and that you and all the attorneys
15 have a duty to disclose to the Court the existence of a plea
16 agreement and the terms of that agreement?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have your attorneys entered into a
19 written plea agreement on your behalf with the government?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And Mr. Benzer, did you sign the plea
22 agreement?

23 THE DEFENDANT: Yes, I did, Your Honor.

24 THE COURT: Before you signed it, did you read it?

25 THE DEFENDANT: Yes, I did, Your Honor.

1 THE COURT: Did you understand all the terms of the
2 plea agreement?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And did you discuss it with your
5 attorneys?

6 THE DEFENDANT: Yes, I did.

7 THE COURT: And have they answered all your
8 questions?

9 THE DEFENDANT: They have.

10 THE COURT: All right. Mr. La Bella, what's the
11 substance of the plea agreement?

12 MR. LA BELLA: Your Honor, there is a plea agreement,
13 and it's not binding on the court. It is that the defendant
14 will plead guilty to all counts in all indictments, the tax
15 evasion and the fraud indictments, and no additional charges
16 will be brought against him in connection with those activity.

17 The sentencing guidelines, the parties recognize that
18 they are going to apply, and the Court must refer to them. But
19 as far as the sentencing guidelines, the parties have only
20 agreed to the following:

21 That the base offense level is seven; that the number
22 of victims enhancement is plus two, pursuant to guidelines
23 Section 2B1.1(b)(2)(A)(i), and everything else basically is
24 open, Your Honor, for the time of sentencing. That the
25 government recognizes that the defendant has accepted

1 responsibility, so is going to recommend the two point level
2 adjustment.

3 And the government also recognizes that, by virtue of
4 the plea of guilty, this far in advance of trial, that the
5 defendant will have saved the government and the Court
6 significant time and effort. And in that regard, assuming all
7 other conditions are met, we are going to give him credit for
8 the third acceptance of guilt point on the sentencing
9 guidelines.

10 The criminal history and everything else will be
11 decided by the Court and the probation department
12 presentencing. The other sentencing matters are that the --
13 the defendant reserves the right to appeal his sentence, but
14 not his conviction or any other aspect of his conviction. But
15 he does preserve the right to appeal his sentence after it's
16 imposed by the Court.

17 As far as fines and special assessments, there are no
18 agreement on fines, special assessments, and restitution, other
19 than the defendant recognizes he has to pay the special
20 assessment per count of conviction.

21 And again, the waiver of appeal, in exchange for the
22 concessions made by the United States, in the plea memorandum,
23 the defendant knowingly and expressly waives his right to
24 appeal his guilty plea and conviction. He also waives his
25 right to any collateral challenges, including any claims under

1 28, USC, Section 2255, to the conviction and to the procedures
2 by which the Court adjudicated guilty, except non-waivable
3 claims of ineffective assistance of counsel.

4 The defendant only reserves the right to appeal only
5 his sentence and the manner in which the sentence was
6 determined, on the grounds set forth in Title 18, United States
7 Code, Section 3742. That's the only exception, Your Honor.

8 As far as the penalties, Your Honor has gone over the
9 penalties and the elements. As far as the elocution, the
10 elocution has been recited in paragraphs 25 through 45 of his
11 plea memorandum in detail.

12 It's something that the government and the defendant
13 have reviewed and accepted, and the defendant specifically
14 admits and declares, under penalty of perjury, that they -- all
15 the facts stated in there are accurate, true, and correct.

16 I believe that's it, Your Honor. And those
17 agreements apply to the tax evasion indictment as well, but
18 there are no understandings with respect to the guidelines vis
19 a vis the tax indictment. That's all going to be left for the
20 time of sentencing.

21 THE COURT: All right.

22 MR. ALBREGTS: I think that's all.

23 THE COURT: Thank you. Mr. Albregts, do you agree
24 the substance of the plea agreement has been correctly stated?

25 MR. ALBREGTS: Yes, Your Honor.

1 THE COURT: Mr. Benzer, is that your understanding of
2 the terms to which you agreed in order to resolve the criminal
3 charges against you?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Has anyone made any promise to you, other
6 than those set forth in the plea agreement, that induced you to
7 plead guilty?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Do you understand that any recommendation
10 of sentence, agreed to by your attorney and the attorney for
11 the government, is not binding on the Court, and that you
12 might, on the basis of your guilty plea, receive a more severe
13 sentence than that requested or recommended?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you understand if that were to
16 happen, you would not have the right to withdraw your guilty
17 plea?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Under the Sentencing Reform Act of 1984,
20 the United States Sentencing Commission has issued advisory
21 guidelines for judges to follow in determining the appropriate
22 sentence in criminal cases.

23 Have you and your attorneys talked about how those
24 sentencing commission guidelines might apply to the facts of
25 your case?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And have they answered all your
3 questions?

4 THE DEFENDANT: They have, Your Honor.

5 THE COURT: Do you understand the Court will not be
6 able to determine the appropriate guideline sentence for your
7 case until after the presentence report has been completed?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you understand after it has been
10 determined what guideline applies to your case, I have the
11 discretion to impose what I consider to be a reasonable
12 sentence, but it may be a sentence that is in excess of the
13 sentence called for by the guidelines?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you understand if that were to
16 happen, you would not have the right to withdraw your guilty
17 plea?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you also -- excuse me. Do you also
20 understand that under some circumstances, to the extent that
21 you have not waived the right, you or the government may have
22 the right to appeal any sentence that I impose?

23 THE DEFENDANT: Yes, Your Honor.

24 MR. LA BELLA: If I understand your plea agreement
25 correctly, at paragraph G, Page 4, you have waived the right to

1 appeal your guilty plea and conviction but not -- you don't
2 have the right to appeal your sentence; is that the
3 understanding of the parties?

4 THE DEFENDANT: Yes, Your Honor.

5 MR. ALBREGTS: He has the right to appeal the
6 sentence.

7 THE COURT: Let me try -- I stated the reverse. Let
8 me try it again.

9 MR. ALBREGTS: I may have misheard you. I'm sorry.

10 THE COURT: Under paragraph G, Page 4, you have
11 waived the right to appeal your guilty plea and conviction;
12 correct?

13 MR. ALBREGTS: Yes.

14 THE DEFENDANT: That's correct, Your Honor.

15 THE COURT: All right. And that's all you have
16 waived, so -- I mean, you still have the right to appeal the
17 sentence. Whatever sentence is imposed, you have the right to
18 appeal that; correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: I want to be sure that everybody's on the
21 same page.

22 MR. ALBREGTS: And I think we are.

23 THE COURT: And do you agree, Mr. La Bella, that's
24 it?

25 MR. LA BELLA: That's accurate, Your Honor.

1 THE COURT: Because this waiver is a little bit
2 different from the ones we usually see here, so I just want to
3 go -- be very careful.

4 MR. ALBREGTS: That's true, Your Honor.

5 THE COURT: You have also waived all collateral
6 challenges, including any claims under 28, USC, Section 2255,
7 to your conviction, sentence, and the procedure -- I'm sorry --
8 to your conviction, not the sentence.

9 THE DEFENDANT: That's correct, Your Honor.

10 THE COURT: All right. Now, let me try that again,
11 because I was going on automatic pilot, and I misstated. Let
12 me try it again. You have also waived all collateral
13 challenges?

14 THE DEFENDANT: The collateral challenges, yes, Your
15 Honor.

16 THE COURT: Including any claim, under USC, Section
17 2255, to your conviction and the procedures by which the Court
18 adjudicated guilt, except for non-waivable claims of
19 ineffective assistance of counsel; correct?

20 THE DEFENDANT: Yes, Your Honor.

21 MR. LA BELLA: You have also retained your 2255 --
22 28, USC, Section 2255 rights concerning the sentence that may
23 be imposed.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: I mean, assuming there are -- I don't --

1 I haven't analyzed it to determine if there are any rights.
2 But if there are any to the sentence under 28 USC, Section
3 2255, you've retained the right to appeal that; correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Everybody agreed with that?

6 MR. ALBREGTS: As to the sentence, yes, Your Honor.

7 MR. LA BELLA: Yes.

8 THE COURT: Okay. Do you also understand that parole
9 has been abolished, and if you are sentenced to prison, you
10 will not be released on parole?

11 THE DEFENDANT: May I have a second, Your Honor?

12 THE COURT: Yes, sir. Take a moment.

13 (Off-the-record discussion.)

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you also understand that any relevant
16 conduct of yours, whether charged in the indictment or not,
17 might still be considered in the presentence report and might
18 increase the sentence to be imposed by the Court?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand if that were to happen,
21 you would not have the right to withdraw your guilty plea?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Mr. Albregts, in your plea packet, there
24 is a written summary of the government's evidence against this
25 defendant to support his guilty plea. Do you agree with that

1 summary?

2 MR. ALBREGTS: Yes, I do, Your Honor.

3 THE COURT: Mr. Benzer, do you agree with the summary
4 about what you did?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you have any questions about the
7 summary?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: How do you plead then to the indictments,
10 guilty or not guilty?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Are you pleading guilty because in truth
13 and fact you are guilty and for no other reason?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Tell me, in your own words, what you did
16 that has convinced you to plead guilty.

17 THE DEFENDANT: I had an agreement with other
18 defendants to take control of the HOAs to steer construction
19 defect cases to my company and certain lawyers. We did this
20 through fraudulent acts outlined in the plea agreement.

21 THE COURT: All right. Well, is it true that you
22 acknowledge that you knew of the -- that you were a member of a
23 conspiracy, and you knew of the unlawful purpose of the
24 conspiracy and willfully joined it. And you are therefore
25 responsible, as a member of the conspiracy, for those actions

1 taken by your conspirators in furtherance of the conspiracy; is
2 that true?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is it also true that you, together with
5 your attorney coconspirator -- whom I assume is -- who I assume
6 is Nancy Quon; is that correct?

7 MR. ALBREGTS: Yes, Your Honor.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is that correct, Mr. La Bella?

10 MR. LA BELLA: Yes, Your Honor.

11 THE COURT: And then just -- because I want to use
12 the right pronoun when we get down to that.

13 MR. LA BELLA: Yes, Your Honor.

14 THE COURT: Together with Miss Quon developed a
15 scheme to take over control of the targeted homeowners
16 associations in the Las Vegas area; is that true?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And these targeted HOAs had to meet
19 certain criteria, including number of units and potential for
20 construction defect litigation. And the scheme began with you
21 gaining control of a majority of the board of directors' seats
22 on a targeted HOA; is that true?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And this was done through recruiting
25 straw purchasers, who were willing, for a fee, to allow you to

1 use their names and credit scores to purchase condos at those
2 targeted HOAs; is that true?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And the straw purchases were funded by
5 you and also in part bankrolled by Miss -- by your attorney
6 coconspirator, Miss Quon; is that true?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And she had agreed to advance you over
9 \$2 million in connection with this scheme; correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And the object was, through controlling
12 HOA boards, to steer construction defect litigation to her law
13 firm. And in return for doing that, she agreed to share
14 10 percent of the attorney's fees with you at the conclusion of
15 the construction defect case; is that true?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Is it also true that you planned to have
18 construction defect or remediation work steered to your
19 company, Silver Lining Construction, through the same
20 controlled homeowner boards; is that true?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And the conspiracy funded all expenses
23 associated with the purchase of condominiums by the straw
24 purchasers, as well as all expenses associated with the condos;
25 is that true?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And those expenses included earnest
3 money, down payments, mortgage payments, HOA dues, and taxes.
4 And also these straw buyers were promised a yearly fee, ranging
5 from approximately 4- to \$5,000, for the use of their names and
6 credit scores, which were used to obtain financing for the
7 condos; is that true?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is it also true that many straw buyers
10 routinely lied on mortgage loan applications about the source
11 of the down payment and/or the primary use of the condo in
12 order to secure financing or more favorable rates; true?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And is it also true that many straw
15 buyers were also designated by you to run for and to serve on a
16 HOA board of directors; is that true?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And that at times the person who was to
19 run for the board of directors' seat would be different from
20 the straw owner, whose credit had been used for the original
21 purchase of the condo. And in those cases, the straw owner
22 agreed to allow a quitclaim deed to be executed that would
23 convey a percentage ownership in the condominium to the
24 designated board of directors' candidate; is that correct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And that way the so-called candidate --
2 hand-picked candidate could run as an owner of the particular
3 condo; true?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And all of the directors on these various
6 boards controlled by you, when elected, received money from you
7 in return for taking direction and instructions from you and
8 your coconspirators as to what action they should take as
9 members of the respective HOA board of directors; correct?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Is it also true that once in control of a
12 board of directors, you would direct that an attorney selected
13 by you be hired by the captive board to serve as general
14 counsel for the homeowners association; is that true?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Is it also true that the coconspirator,
17 Keith Gregory, who at that time was one of your attorneys, was
18 designated by you to be hired as general counsel at Vistana and
19 at Sunset Cliffs; is that true?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And coconspirator David Amesbury, who was
22 also one of your attorneys, as well as your business partner in
23 the Courthouse Cafe, was hired at your direction as general
24 counsel at Chateau Versailles, and hired as a special election
25 master at Petal Creek -- Pebble Creek and Chateau Nouveau; is

1 that true?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And coconspirator Barry Levinson, another
4 attorney, was also designated by you to serve as general
5 counsel at Park Avenue and at Pebble Creek. And that all of
6 these attorneys were hired to -- or I should say each of these
7 attorneys -- these three attorneys were hired to represent the
8 homeowners association. They actually took direction from you
9 and your coconspirators, assisted the goals of the conspiracy,
10 and were paid by you for the work that they performed; is that
11 true?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And is it also true that you selected
14 certain management companies to be hired by your controlled
15 board members, including Platinum Management, as well as two
16 management companies that you secretly owned, Family HOA and
17 Crystal, and they were hired at several targeted HOAs including
18 Vistana; is that true?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Once the attorney and management
21 companies were in place, you and the coconspirators were able
22 to direct the actions of the homeowners associations and able
23 to rig board of directors' elections in order to assure your
24 continued control of the board of directors; is that true?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you and your coconspirators were
2 successful in gaining control at Vistana Park -- I'm sorry --
3 at Vistana, Park Avenue, Chateau Versailles, Chateau Nouveau,
4 and Pebble Creek; is that true?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And you attempted also to gain control at
7 Jasmine and other homeowners associations; correct?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: It is also true that the paid straw
10 owners included Sam Ruvolo at Chateau Nouveau and Park Avenue,
11 and Edith Gillespie at Vistana and Chateau Versailles; true?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And in securing a loan for
14 Miss Gillespie's unit at Chateau Versailles, she stated on her
15 loan application that she worked for Silver Lining
16 Construction, although she had never worked for your company;
17 is that true?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And she was paid for recruiting other
20 straw owners?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And the paid directors included, among
23 others, Sam Ruvolo, at Chateau Nouveau and Park Avenue, and
24 Charles McChensey -- strike that -- Charles McChesney, M-C
25 capital C-H-E-S-N-E-Y, at Chateau Nouveau, and David Ball at

1 Chateau Nouveau; is that true?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And then at Vistana, in order to secure a
4 contractual right of first refusal and obtain a mobilization
5 fee, you, with the assistance of Keith Gregory and David
6 Amesbury, two coconspirators, created the illusion that an
7 emergency HOA meeting was needed in September 2007.

8 And through the efforts of Mr. Amesbury, Mr. Gregory,
9 Ralph Priola, Steve Wark and other coconspirators, at the
10 direction of you, you were able to schedule an emergency HOA
11 meeting, and Silver Lining Construction was awarded over
12 \$1 million as a mobilization fee in a construction defect
13 remediation contract there; is that true?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is it also true at Chateau Versailles,
16 Chateau Nouveau, and Park Avenue, through controlling the board
17 of directors at each of those, the management company and the
18 attorneys hired by the board of directors, which you
19 controlled, you were able to award -- you were able to direct
20 the awarding of construction defect litigation cases to your
21 coconspirator attorneys, and to have Silver Lining Construction
22 in place to do the resulting remedial work once the
23 construction defect cases settled; is that true?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And then at Jasmine, you attempted to

1 take over the board of directors through three straw
2 purchasers, who initially agreed to become owners to run for
3 the Jasmine Board of Directors, and in return, from money from
4 you, were to steer potential construction defect litigation and
5 remediation work to a law firm and construction company
6 designated by you; is that true?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And then for the tax evasion conduct, as
9 of April 2007, you had failed to pay your personal tax
10 liability owed for the years -- the tax years 2001 through
11 2005, and the past due liability of Silver Linings Construction
12 for the employment tax liability and the unemployment tax
13 liability, each of which was a material amount of money owed;
14 is that true?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And the IRS thereafter issued a notice of
17 intent to file a levy. And on or about May 9, 2007, you
18 appealed the process, indicating you wanted to enter into an
19 offer in compromise, with the IRS, to pay a portion of what was
20 owed, and that was to serve as full satisfaction of all your
21 tax liabilities; is that true?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And during this offer and compromise
24 process, the IRS requested detailed financial information from
25 you in order to accept less than the full amount of tax due and

1 owing in satisfaction of the outstanding tax liability; is that
2 true?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And then on or about August 29, 2007, you
5 opened the personal bank account ending in the four numbers
6 7214 with US Bank in your own name; is that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And then in or about March -- let me try
9 that again. Between in or about March 2005 and/or January --
10 about January 2008, you and Silver Lining Construction received
11 in excess of approximately \$7 million from the Vistana
12 Homeowners Association for work purportedly done pursuant to
13 Silver Lining Construction's contract with the Vistana HOA; is
14 that true?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: As part of the payments, on or about
17 September 21, 2007, you received a wire transfer in the amount
18 of \$1,098,000 into account ending in the four numbers 7214,
19 from the Vistana Homeowners Association, for work purportedly
20 performed by Silver Lining Construction pursuant to its
21 contract with the Vistana HOA; is that true?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And you used most of the funds from the
24 Vistana HOA, in account 7214, for your own personal use; is
25 that correct?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Excuse me. And then on or about
3 September 25, 2007, as part of the offer and compromise process
4 with the IRS, you, or others acting on your behalf, filed IRS
5 Forms 433-A and 433-B that did not disclose the existence of
6 the bank account ending in the numbers 7214 or the assets
7 therein; is that true?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Then on or about September 25, 2007, here
10 in the State and Federal District of Nevada and elsewhere, you,
11 who at that time owed a deficiency on your employment taxes,
12 for tax period September -- for the tax periods ending
13 September 30, 2003, December 31, 2003, and March 31, 2004, and
14 on your unemployment taxes for tax year 2003, all in a material
15 amount of money, willfully made attempts to evade the payment
16 of the employment and unemployment taxes owing, including but
17 not limited to, opening and causing to be opened and using and
18 causing to be used a bank account at US Bank, which was
19 established in your name, to conceal money and assets.

20 And you also prepared and caused to be prepared and
21 filed and caused to be filed material false financial forms
22 with the IRS, while Silver Lining Construction continued to owe
23 an outstanding employment and unemployment tax liability; is
24 that true?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Is that sufficient for the
2 government, Mr. La Bella?

3 MR. LA BELLA: Yes, Your Honor.

4 THE COURT: Thank you. All right, Mr. Benzer. Since
5 you acknowledge that you are in fact guilty as charged in the
6 indictments -- the two indictments -- since you know your right
7 to trial, what the maximum possible punishment is, and since
8 you are voluntarily pleading guilty, I will conditionally
9 accept your guilty plea.

10 It is the finding of the Court, in the case of the
11 United States versus Leon Benzer, that the defendant is fully
12 competent and capable of entering an informed plea, and that
13 his plea of guilty is a knowing and voluntary plea, supported
14 by an independent basis in fact, containing the essential
15 elements of the offenses charged. Therefore, his plea is
16 conditionally accepted.

17 Mr. Benzer, I am now going to order a presentence
18 investigation report. I urge your full and complete
19 cooperation in providing information for the report; because,
20 obviously, the terms of it are important to the Court in
21 determining what your sentence will be.

22 I want you to understand that any time you meet with
23 the probation officer, to provide information for the report,
24 you have the right to have your attorneys present with you.
25 Then prior to the sentencing hearing, you will have the

1 opportunity to read, review, and comment upon the report.

2 Finally, at the sentencing hearing, you may address
3 the Court, you may have your attorneys speak on your behalf, or
4 both you and your attorneys may speak. It's your option. Do
5 you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I want you to understand the presentence
8 report may have some importance to you that continues beyond
9 the sentencing date. If you are sentenced to prison, this
10 report follows you throughout your term of incarceration, and
11 any time the people at the Federal Bureau of Prisons need to
12 make any decision at all about you, the very first document
13 they always consult is the presentence report. So, it's
14 important that it be complete and accurate. Do you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. David, give us a sentencing
17 date. Make it four months out.

18 COURTROOM ADMINISTRATOR: Friday, May 15, 2015, at
19 10:00 o'clock a.m.

20 THE COURT: Friday, May 15.

21 COURTROOM ADMINISTRATOR: Yes, Your Honor.

22 MR. ALBREGTS: Your Honor, my only comment -- and I
23 think the government would concur with these comments -- is
24 there may -- there is obviously going to be a lot of sentencing
25 issues, with guideline analysis, and facts, and related things,

1 so it may be a longer sentencing hearing.

2 Having said that, we are also going to be sitting
3 down -- it's not like we are not going to be talking with the
4 government about these issues and see if we can settle some in
5 the interim.

6 THE COURT: Sure.

7 MR. ALBREGTS: But that's probably not going to
8 happen until they are finished in the other trials. So, I
9 don't know that we would be done with all of that by May 15th.
10 But if you want to keep that as a date, and we can filed a
11 stipulation, if we find that's necessary, whatever the Court's
12 pleasure. I just want to notify you of these issues.

13 THE COURT: And I appreciate that. Mr. La Bella, I
14 will be glad to do that either way. I mean, we can set it off
15 for July then.

16 MR. LA BELLA: I think that would probably make most
17 sense, Judge, because if you sent a control date in July, that
18 will be good for us. And I think Mr. Albregts and I are going
19 to sit down, and if we can't agree on issues, we are going to
20 certainly narrow issues for the Court, so we can say, "Judge,
21 you need to call a ball a strike."

22 THE COURT: Yeah.

23 MR. LA BELLA: "Here's -- here's what we can" --

24 THE COURT: And I appreciate that. I don't want to
25 cut that process short. It's a -- you know, let the process

1 play out.

2 MR. ALBREGTS: And I just knew July would be the
3 Court's suggestion, because my dad turns 80 in July, and we
4 have some family matters back in the Midwest.

5 THE COURT: All right.

6 MR. ALBREGTS: I don't know if the Court would see
7 fit for August. We can try June. I will leave that to the
8 Court, but July is not a good month.

9 THE COURT: Well, with this, I mean, it's, I think,
10 longer rather than shorter. Mr. La Bella, do you agree? What
11 about August? Right around the first of August? Would that --

12 MR. LA BELLA: I would of love to come to Las Vegas
13 in August, Your Honor. That's my favorite time, so --

14 MR. ALBREGTS: But I anticipate -- I anticipate
15 being -- you know, it's not like I will need that July to
16 prepare. I anticipate, before I leave for those family
17 matters, to be fairly prepared for this. So August should
18 work.

19 THE COURT: All right. I mean, the alternative is
20 June. If you want, I can go either June or August.

21 MR. ALBREGTS: I would prefer August.

22 THE COURT: August, is that agreeable? Is that
23 agreeable with you, Mr. La Bella?

24 MR. LA BELLA: That's fine. That give us enough time
25 to work it out. We have the trial coming up, and we are going

1 to be as diligent as we can. And there's going to be some time
2 we are going to spend with the probation department as well, so
3 I think that makes sense.

4 THE COURT: All right. Then so then let's do it --
5 set in August then, like early August.

6 COURTROOM ADMINISTRATOR: Monday, August 3, 2015, at
7 10:00 a.m.

8 THE COURT: Monday, August 3, 2015, at 10:00 a.m.
9 And then if -- depending on how things go, if you say, "Let's
10 move the sentencing up," we can move it up, or we can move it
11 back.

12 It's not like I am wedded to that date. It had as to
13 go on that date. Whenever the parties are ready to go, then we
14 can do that. Of course there are other -- a number of other
15 sentencings that are going to take place, too.

16 MR. ALBREGTS: Your Honor, the only other issue, I
17 believe the government has no opposition to Mr. Benzer being
18 continued on the same conditions of release.

19 THE COURT: And that would be my intent. I got a
20 report. Have you even seen this, Mr. Albregts?

21 MR. ALBREGTS: I have not.

22 THE COURT: From Pretrial Services? And they -- it's
23 their recommendation the defendant be continued on bond with
24 the current conditions of release. Any objection to that?

25 MR. LA BELLA: No objection, Your Honor.

1 THE COURT: All right. That will be the order of the
2 Court.

3 MR. ALBREGTS: Thank you, Your Honor.

4 THE COURT: Anything else then?

5 MR. ALBREGTS: Nothing.

6 MR. LA BELLA: Nothing for the government, Your
7 Honor.

8 MR. ALBREGTS: No, Your Honor.

9 THE COURT: Thank you. We will be in recess.

10 (Recess, 11:11 a.m.)
11

12 --oOo--

13 COURT REPORTER'S CERTIFICATE
14

15 I, KATHERINE EISMANN, Official Court Reporter, United
16 States District Court, District of Nevada, Las Vegas, Nevada,
17 certify that the foregoing is a correct transcript from the
18 record of proceedings in the above-entitled matter.
19

20 Date: January 28, 2015.

21 /s/ Katherine Eismann

22 Katherine Eismann, CSR CRR RDR
23
24
25